



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 7, 1991

Ms. Margaret Ward  
City Attorney  
City of San Angelo  
P. O. Box 1751  
San Angelo, Texas 76902

OR91-558

Dear Ms. Ward:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13967.

The San Angelo Police Department (the department) received an open records request from an attorney representing an individual arrested for public intoxication, who later filed a complaint against the arresting officer. Specifically, the requestor seeks copies of witness statements gathered during the department's investigation of the circumstances surrounding the arrest. You contend that the requested information comes under the protection of section 3(a)(3) of the Open Records Act.<sup>1</sup>

To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990). The mere chance of liti-

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<sup>1</sup>You also contend that the witness statements may be withheld pursuant to sections 3(a)(2) and 3(a)(11), citing Open Records Decision No. 106 (1975) as authority. We note that the rationale used in Open Records Decision No. 106 with regard to section 3(a)(2) has long been abandoned by this office. *See, e.g.*, Open Records Decision No. 400 (1983) (copy enclosed). However, because the information may be withheld on other grounds, we need not address your section 3(a)(2) or 3(a)(11) claims.

gation will not trigger the 3(a)(3) exception. Open Records Decision Nos. 331, 328 (1982). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Open Records Decision No. 328.

The requestor has alleged that during the course of the arrest the arresting officer "proceeded to beat [the complainant] by hitting him several times ..." and that as a result the complainant suffered serious injuries. Based on the above information, we believe it reasonable for the arresting officer, the department, or both to anticipate litigation regarding this matter. The requested witness statements are central to the grounds for that litigation; you may therefore withhold at this time the witness statements in their entirety pursuant to section 3(a)(3).

We note, however, that once all parties to the litigation have obtained or had access to the information requested here, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Because the complainant had previous access to his own statement given to the police, that statement may not now be withheld pursuant to section 3(a)(3).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-558.

Yours very truly,



Kym Oltrogge  
Assistant Attorney General  
Opinion Committee

KO/RWP/lcd

Ref.: ID# 13967

Enclosures: Open Records Decision No. 400

cc: Bradley C. Miles  
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(w/o enclosures)